

Application No. 10/523,754
Amendment dated March 6, 2008
After Final Office Action of September 6, 2007

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CENTRAL FAX CENTER

Docket No.: NY-GRYN 215-US

MAR 06 2008

REMARKS

Status of the Claims

Claims 61, 63-90 are currently pending.

Claims 61 - 90 stand rejected.

Claim 62 is canceled herein.

Claims 61, 63, 64, 66, 67, 68, 77, and 88 are amended herein.

In light of the above-amendments and remarks to follow, reconsideration and allowance of this application are requested.

Claim Objection

Claim 88 has been objected to by the Examiner. In order to overcome the rejection, the claim has been amended according to the Examiner's instructions. It is respectfully submitted that the objection is now overcome.

Claim Rejections

Claim 77 has been rejected as being indefinite under 35 U.S.C. § 112. Accordingly, applicants respectfully requests that the § 112 rejection be withdrawn for the reasons set forth herein. Claims 61, 80 and 82-83 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by EP 1 158 439 to Battilega et al. (hereafter "Battilega"). Claims 62-73, 81 and 84-90 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Battilega and U.S. Patent Application No. 2002/0038350 to Lambert et al. (hereafter "Lambert"). Claims 74, 75 and 77-79 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Battilega et Lambert and REQUEST FOR COMMENTS: 2109 (1997) (hereafter "RFC 2109"). Claim 76 is rejected as under 35 U.S.C. § 103(a) as allegedly being unpatentable over Battilega, Lambert, RFC 2109 and CROSS BROWSER LAYERS, PART ONE (2001) by Budi Kurniawan (hereinafter "Kurniawan"). Applicant respectfully traverses these rejections.

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35 U.S.C. § 112 Rejection

Claim 77 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended claim 77 per the Examiner's instructions to conform with 35 U.S.C. § 112. Applicants further direct the Examiner to paragraph [00330] of the Application for a related description of the claimed subject matter.

Anticipation Rejections

A rejection based on 35 U.S.C. § 102 as in the present case, requires that the cited reference *disclose each and every element covered by the claim*. *Electro Medical Systems S.A. v. Cooper Life Sciences Inc.*, 32 U.S.P.Q.2d 1017, 1019 (Fed. Cir. 1994); *Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766, 1767-68 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 1007 (1988); *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2D 1051, 1053 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987). The United States Court of Appeals for the Federal Circuit has mandated that 35 U.S.C. § 102 requires no less than "complete anticipation." *Connell v. Sears, Roebuck & Co.*, 772 F.2d 1542, 1548, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983). "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim." *Id.*; *see also Connell v. Sears, Roebuck & Co.*, 772 F.2d 1542, 1548, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983); *see also, Electro Medical Systems*, 32 U.S.P.Q. 2d at 1019; *Verdegaal Bros.*, 814 F.2d at 631. In order to expedite the prosecution of this application and without admitting propriety of this rejection, applicants have amended independent claim 61 to include additional elements not disclosed by Battilega as admitted by the Examiner, thereby obviating this rejection.

Specifically, claim 61 has been amended to include the elements iterated in claim 62. As admitted by the Examiner, "Battilega et al does not teach the elements of claim 62, that is, where the *code further comprises a visibility module comprising instructions for analyzing the visibility of a website in the Internet to provide a visibility data, wherein*

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the visibility of said website is the rate of appearance or classification of said website in a list of results proposed by a search tool in response to a keyword." Because Battilega does not teach all the elements of amended claim 61, Battilega cannot anticipate amended claim 61 and any of its dependent claims 80, 82, and 83.

Obviousness Rejection

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. Because independent claim 61 has been amended to include the additional elements of claim 62, the following discussion will be made with respect to amended independent claim 61. It is respectfully submitted that a *prima facie* case of obviousness has not been established by the Examiner because neither Battilega, Lambert, RFC 2109 (1997), nor Kurniawan, alone or in any total or partial combination teach or suggest all the limitations of the instant claims. Because claim 62 has been subsumed into claim 61, the arguments set forth below are directed towards the newly amended independent claim 61 and dependent claims.

Battilega relates to providing consulting services to a customer via a commonly shared interface through the Internet wherein the interface is merely used to facilitate communication between the consultant and the user to identify and solve a problem solved by the consultant. (See, e.g., Battilega Abstract, (57)). Battilega nowhere teaches or suggests referencing websites indexed by Internet search tools and providing access to a database using two separate interfaces as required by the amended claim 61: 1) a client

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interface and 2) a consultant interface. Specifically, one interface is for a client who is managing a website, and a second interface is for a consultant to reference the website, communicate with the client regarding the website, and analyze the visibility of the website using tools provided by the system based on the data collected in the database. (See, e.g., Specification ¶¶ 65 – 68). In fact, Battilega is primarily directed to a single, centralized client interface: “a common centralized collaboration area is established . . . where single versions of information, evaluations, and draft reports are posted, accessed, reviewed, and updated by the customer and consultant.” (Battilega, col. 8, ¶¶ 29-30) (emphasis added). Nowhere does Battilega teach a separate consultant interface as required by the instant claims. Contrary to the Examiner’s assertion, Battilega does not teach “granting a client . . . access to a database by a client interface” and “granting access to a consultant . . . by a consultant database” as required by the instant claims (emphasis added).

Furthermore, as explained by the Examiner, “Battilega et al does not teach the elements of claim 62 [now subsumed in amended claim 61], that is, where the “*code further comprises a visibility module comprising instructions for analyzing the visibility of a website in the Internet to provide a visibility data, wherein the visibility of said website is the rate of appearance or classification of said website in a list of results proposed by a search tool in response to a keyword.*” (09/06/2007 Office Action at 6). To cure this deficiency, the Examiner turns to Lambert. Applicants respectfully submit that Lambert “relates generally to the enhancement of Web page delivery. More specifically, the Lambert employs techniques for “identifying visitors, both humans and search engine spiders, and appropriately redirecting them to specific Universal Resource Locators” (emphasis added) (Lambert et al, ¶ 2) (emphasis added). While Lambert system may arguably increase a visibility of a website by “appropriately redirecting them [users] to specific Universal Resource Locators” (see, e.g., Abstract, ¶¶ 2, 14, 22), nowhere does Lambert teach or suggest measuring and analyzing visibility where

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visibility is defined as "*the rate of appearance or classification of said website in a list of results,*" as required by the claims of the present invention. In fact, the Lambert system would be incapable of obtaining such data because it *reacts* to individual incoming requests and does not pro-actively obtain search results or view search engine results. (See, e.g., *Lambert* Fig. 2, item 2; Fig. 3, item 320). Even paragraphs 120-127 in *Lambert*, cited by the Examiner do not include visibility data "as the rate of appearance or classification of said website in a list of results," they include other types of data that the Lambert system may be able to receive. Nowhere does *Lambert* teach analyzing and measuring the visibility of a website where visibility is defined as "*the rate of appearance or classification of said website in a list of results proposed by a search tool in response to a keyword*" required by all the claims of the present invention (see amended claim 61). Moreover, nowhere does *Lambert* teach the client interface and the consultant interface required by all the instant claims (see amended claim 61).

The prior art must to be judged based on a full and fair consideration of what that art teaches, not by using applicants' invention as a blueprint for gathering various bits and modifying the pieces in an attempt to reconstruct applicants' invention. The Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable. There is no objective teaching in *Lambert* to reconstruct *Lambert* in a manner suggested by the Examiner where *Lambert* provides visibility results wherein visibility is the rate of appearance or classification of websites in a list of results proposed by a search tool in response to a keyword as required by the present claims. Moreover, neither Battilega nor *Lambert* teach or suggest systems and methods where two interfaces are provided: one for a client and a separate one for a consultant or of a "visibility module comprising instructions for analyzing the visibility of a website . . . wherein the visibility of said website is the rate of appearance or classification of said website in a list of results

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proposed by a search tool in response to a keyword," as required by the claims of the present invention. Accordingly, it is submitted that the Examiner has succumbed to the lure of prohibited hindsight reconstruction.

Additionally, the Examiner cites RFC 2109 to cure the deficiency in Battilega and Lambert with respect to "the duration of visits," being part of the analysis, as required in claim 74. (Office Action at 20, Par. 1). However, RFC 2109 does not even remotely relate to referencing websites indexed by Internet search tools. RFC 2109 relates generally to HTTP requests and responses to track website usage, primarily by using cookies, for the purpose of webpage/website interaction. Accordingly, section 3 of RFC 2109 cited by the Examiner merely describes a way to exchange state information to place HTTP requests as sessions. Accordingly, RFC 2109, at best, describes a method for webpages and websites to interact with each other without a human intervention, i.e. RFC 2109 does not describe any interface whatsoever for client or consultant access of the duration of visits other than for the use of machine-based website interaction. Even assuming *arguendo* that RFC 2109 relates to the present invention, there is simply no teaching or suggestion in RFC 2109 of utilizing two separate interfaces (client and consulting) to manage the access to a single database via two separate interfaces or of a "visibility module comprising instructions for analyzing the visibility of a website . . . wherein the visibility of said website is the rate of appearance or classification of said website in a list of results proposed by a search tool in response to a keyword," as required by the claims of the present invention.

Additionally, the Examiner cites Kurniawan to cure the deficiency in Battilega, Lambert, and RFC 2109 with respect to accessing "a summary of a browser or navigation type used by Internet users" on a website as required in claim 76. (Office Action at 22, Par. 1). Kurniawan is directed to cross-browser layers and is not remotely related to referencing websites indexed by Internet search tools. Even assuming *arguendo* that

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Kurniawan relates to the present invention, there is simply no teaching or suggestion in Kurniawan of utilizing two separate interfaces (client and consulting) to manage the access to a single database or of a "visibility module comprising instructions for analyzing the visibility of a website . . . wherein the visibility of said website is the rate of appearance or classification of said website in a list of results proposed by a search tool in response to a keyword," as required by the claims of the present invention.

As demonstrated above the combinations of: 1) Battilega and Lambert; 2) Battilega, Lambert, and RFC 2109; and 3) Battilega, Lambert, RFC 2109, and Kurniawan do not teach or suggest utilizing two separate interfaces to manage the access to a single database or a "visibility module comprising instructions for analyzing the visibility of a website . . . wherein the visibility of said website is the rate of appearance or classification of said website in a list of results proposed by a search tool in response to a keyword," as required by the claims of the present invention as required by the claims of the present invention. Accordingly, the Examiner has failed to establish *prima facie* case of obviousness because none of the cited references independently or in combination fail to teach or suggest all the claim limitations of the instant claims.

In view of the foregoing amendments and the remarks above, applicants believe all of the pending claims 61, and 63-90 are now in condition for allowance.

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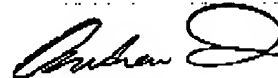
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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-GRYN 215-US (10501310) from which the undersigned is authorized to draw.

Dated: March 6, 2008

Respectfully submitted,



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